

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Kevin J. Reek,

Case No. 20-cv-1864 (WMW/BRT)

Plaintiff,

v.

**ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Amy Boyer et al.,

Defendants.

Plaintiff Kevin J. Reek is incarcerated at the Minnesota Correctional Facility in Rush City, Minnesota (MCF Rush City). Reek commenced this action against Defendants in Ramsey County District Court, Second Judicial District, and Defendants removed the case to this Court in August 2020. The complaint alleges various torts and constitutional claims against Defendants arising from an incident in September 2017 when Defendant Richard Thomas Joles allegedly assaulted Reek at the Ramsey County Law Enforcement Center.

Reek filed a motion for partial summary judgment on August 2, 2021. (Dkt. 62.) Subsequently, the magistrate judge granted Reek's motion to amend the complaint on September 8, 2021. The now-operative amended complaint modifies Reek's claims and factual allegations and removes several defendants.

An amended complaint supersedes an original complaint and divests the original complaint of any legal effect. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 928 (8th Cir. 2005). For this reason, when a plaintiff files an amended

complaint while a motion to dismiss is pending, the amended complaint typically renders the motion to dismiss moot. *Onyiah v. St. Cloud State Univ.*, 655 F. Supp. 2d 948, 958 (D. Minn. 2009) (citing *Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir. 2002)). Similarly, a motion for summary judgment is rendered moot by a subsequently filed amended complaint. *See, e.g., Bituminous Cas. Corp. v. Zadeck Energy Grp., Inc.*, 416 F. Supp. 2d 654, 657 (W.D. Ark. 2005); *Griffin-El v. MCI Telecomms. Corp.*, 835 F. Supp. 1114, 1116 (E.D. Mo. 1993).

Because Reek's motion for summary judgment pertains to the original complaint, which is no longer the operative pleading, Reek's motion is moot. Moreover, because discovery has yet to commence and this case remains at an early stage in the proceedings, a motion for summary judgment as to the recently filed amended complaint is premature at this time. As such, the Court declines to construe Reek's motion for summary judgment as pertaining to the amended complaint.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiff Kevin J. Reek's motion for partial summary judgment, (Dkt. 62), is **DENIED WITHOUT PREJUDICE**.

Dated: October 6, 2021

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge